

EXHIBIT 37

Tetkoski, Frank T.

December 11, 2008

Baltimore, MD

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(captions continue on following pages)

Videotaped deposition of FRANK T. TETKOSKI

Baltimore, Maryland

Thursday, December 11, 2008

9:00 a.m.

Henderson Legal Services, Inc.

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<p>1 BY MR. TORBORG:</p> <p>2 Q. Does it appear that at page 469 of Abbott</p> <p>3 Maryland Exhibit 14 that Maryland had established MACs</p> <p>4 on a large number of erythromycin products?</p> <p>5 A. There's a lot of erythromycin products</p> <p>6 listed here, yes.</p> <p>7 Q. And then if we go to the Bates page 490 and</p> <p>8 491, at the bottom of the page and then carrying over</p> <p>9 there's a number of various generic sequence numbers</p> <p>10 for sodium chloride, right?</p> <p>11 A. Right.</p> <p>12 Q. Injection and irrigation, right?</p> <p>13 A. Right.</p> <p>14 Q. And if we go to the Bates page ending 496,</p> <p>15 does it appear as though MACs had been established for</p> <p>16 vancomycin?</p> <p>17 A. Right. I think though -- I would like to</p> <p>18 point out I think we're going on one assumption here</p> <p>19 that I'm not sure. You're taking this date as the</p> <p>20 date of initial establishment. This might just be the</p> <p>21 date of the last update.</p> <p>22 Q. It could have been established earlier?</p>	<p>1 would compare the lowest price from one wholesaler to</p> <p>2 the lowest price from another wholesaler and take the</p> <p>3 higher of those two, the idea being that whatever</p> <p>4 wholesaler a pharmacy used it would always have that</p> <p>5 lowest price for that particular wholesaler. We would</p> <p>6 meet that at least.</p> <p>7 Q. You didn't use the prices in the compendia</p> <p>8 at all for setting IDC amounts, right?</p> <p>9 A. Compendia? What compendia?</p> <p>10 Q. Are you familiar with what a compendia is?</p> <p>11 First Databank?</p> <p>12 MS. YAVELBERG: Objection, form.</p> <p>13 Q. Are you familiar with First Databank?</p> <p>14 A. First Databank did our -- yeah. They did</p> <p>15 our formulary.</p> <p>16 Q. And are you familiar with the publication</p> <p>17 known as the Red Book?</p> <p>18 A. Right. Yes.</p> <p>19 Q. You're aware that there are certain prices</p> <p>20 in First Databank, right?</p> <p>21 MS. YAVELBERG: Objection, form.</p> <p>22 A. That's their business, prices. I mean, I'm</p>
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<p>1 A. It could have been established before and</p> <p>2 she just printed out the last one, because when we do</p> <p>3 them we say we're putting this on and this is an</p> <p>4 effective date. If it had an IDC on prior to that day</p> <p>5 it would just bump the history down and put this new</p> <p>6 one over it.</p> <p>7 Q. Because this schedule doesn't have any --</p> <p>8 it never has more than one date per line?</p> <p>9 A. Yeah. So I would assume that that's the</p> <p>10 latest -- this is drawn out to see how many we have a</p> <p>11 rate on and what the latest one was. Or maybe that's</p> <p>12 just part of the database and it printed it out.</p> <p>13 Q. And we talked about this a little earlier,</p> <p>14 but what pricing sources did the department use to set</p> <p>15 its IDC amounts?</p> <p>16 MS. YAVELBERG: Objection, form. Time</p> <p>17 period?</p> <p>18 Q. Throughout the time you were there.</p> <p>19 A. Oh. Well, it changed. Initially the way</p> <p>20 the regs were -- again, it's in -- whatever we did was</p> <p>21 in regulations. We would take the two wholesalers.</p> <p>22 We had the microfiche for each wholesaler. And we</p>	<p>1 not sure what you mean -- you mean certain generic</p> <p>2 prices?</p> <p>3 Q. Average wholesale price --</p> <p>4 A. Oh, okay. Right. Yeah, we didn't use, at</p> <p>5 least at that time -- well, when we're doing them we</p> <p>6 use the prices for our IDC off the microfiche from</p> <p>7 wholesalers.</p> <p>8 Q. You don't use the prices in First Databank</p> <p>9 at all for that, right?</p> <p>10 A. Later on we broadened our regulations so</p> <p>11 that we expanded it that we can -- so when these</p> <p>12 prices became unavailable we might have took some sort</p> <p>13 of derivative of that where we used the lowest EAC</p> <p>14 price as a possibility. And we also kept the ability</p> <p>15 to use the wholesaler's price if available. But we</p> <p>16 just wanted to expand that so that we had something.</p> <p>17 Q. But in setting the IDC amount itself you</p> <p>18 did not rely upon any prices in First Databank, right?</p> <p>19 MS. YAVELBERG: Objection, form.</p> <p>20 A. If we had the microfiche from the</p> <p>21 wholesaler we used that where we could get them.</p> <p>22 Q. Are you aware of any instance where the</p>

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<p>1 WAC plus 10 was generally equivalent to AWP minus 10, 2 right?</p> <p>3 A. At the time that was instituted.</p> <p>4 Q. And that's what Ms. Freeze says in the last 5 paragraph -- before that. The second sentence, "The 6 current WAC plus 10 pricing is generally equivalent to 7 average wholesale price (AWP) less 10 percent," right?</p> <p>8 A. That was this -- right. The rule of thumb 9 or whatever you want to call it.</p> <p>10 Q. And OIG had informed the department that it 11 found that for generic drugs this discount -- the 12 average discount off of AWP was about 42 percent, 13 correct?</p> <p>14 A. That's what they found, yes.</p> <p>15 Q. Right?</p> <p>16 So if you take 42 percent minus 20 percent 17 or add 20 percent, what do you get?</p> <p>18 MS. YAVELBERG: Objection, form.</p> <p>19 A. What calculation are you performing? What 20 are you trying to arrive at?</p> <p>21 Q. OIG told Maryland that on average the 22 discount from AWP for generic drugs was 41.9 percent,</p>	<p>1 MS. YAVELBERG: Objection, form.</p> <p>2 A. You mean percentage-wise?</p> <p>3 Q. Yes.</p> <p>4 A. I don't know if we had a percentage that we 5 were going with, actually. We just used -- we didn't 6 look too much at the AWP on the generics. We had -- 7 since we were using WAC we thought that was a lot more 8 stable and more reliable.</p> <p>9 Q. Ms. Freeze says in her memo "The current 10 WAC plus 10 pricing is generally equivalent to average 11 wholesale less 10 percent," right? That's what she 12 says?</p> <p>13 A. That's what she's stating, yes.</p> <p>14 Q. She doesn't say the current WAC plus 10 15 pricing is generally equivalent to average wholesale 16 less 10 percent for brand name drugs?</p> <p>17 A. Right. She doesn't say that.</p> <p>18 Q. She doesn't draw the distinction?</p> <p>19 MS. YAVELBERG: Objection, form.</p> <p>20 A. Right. She doesn't draw the distinction.</p> <p>21 Q. In the first paragraph she stated that "The 22 WAC plus 10 methodology far exceeds the true</p>
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<p>1 correct?</p> <p>2 A. That sounds like the figure that they've 3 got here.</p> <p>4 Q. Maryland knew that there was a 20 percent 5 difference between AWP and WAC, right?</p> <p>6 MS. YAVELBERG: Objection, form.</p> <p>7 A. That implies for brand names. It might not 8 say it. But that's how I understood it.</p> <p>9 Q. You're saying that they had a different 10 understanding for generic drugs?</p> <p>11 A. For brand-name drugs that holds more. For 12 generic drugs -- they're a little more, right. That 13 20 percent is not necessarily as consistent as it is 14 for brand-name drugs.</p> <p>15 Q. It could be even -- what was your 16 understanding as to generic drugs between the 17 relationship between AWP and WAC?</p> <p>18 A. That the AWP for generic drugs could be off 19 more than it is for brand names.</p> <p>20 Q. How about the relationship between AWP and 21 WAC for generic drugs? What was the department's 22 understanding?</p>	<p>1 acquisition cost to the pharmacy," right?</p> <p>2 A. That's what she states.</p> <p>3 Q. So at this time Maryland was aware that the 4 WAC plus 10 methodology far exceeds the true 5 acquisition cost to the pharmacy, right?</p> <p>6 MS. YAVELBERG: Objection, form.</p> <p>7 A. She is stating that. Let me see what we've 8 got here. (Reading).</p> <p>9 It depends what you mean by "far exceeds." 10 That is her words, but --</p> <p>11 Q. They're not my words.</p> <p>12 A. No, no, no. I said it was her words.</p> <p>13 Q. That's what she said?</p> <p>14 A. Yeah. They were her --</p> <p>15 Q. Right?</p> <p>16 A. Far, I mean, I guess the question is what 17 do we mean by far. WAC we look at as basically a 18 base. So if 10 percent is the upper limit of -- 19 outside of that is 10 percent plus that and that's 20 far.</p> <p>21 Q. In the third paragraph she says "The OIG 22 report specifically excluded drug acquisition costs</p>

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<p>1 limitations."</p> <p>2 And then it continues "The state officials</p> <p>3 were concerned that without the above disclaimer that</p> <p>4 uninformed state officials might overreact to our</p> <p>5 report and adjust pharmacy reimbursement without</p> <p>6 considering the other aspects of reimbursement." Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that those kind of comments</p> <p>10 were made in the meeting?</p> <p>11 MS. YAVELBERG: Objection, form.</p> <p>12 A. Those type of comments? This reflects on</p> <p>13 what was at the meeting. That is, the idea being that</p> <p>14 you would cut the ingredient cost without affecting</p> <p>15 the -- adjusting the dispensing fee.</p> <p>16 Q. And what's being talked about here is a</p> <p>17 possibility of having to adjust the fee upwards if you</p> <p>18 were going to cut the ingredient cost, right?</p> <p>19 MS. YAVELBERG: Objection, form.</p> <p>20 A. Right. Adjustments have to be made as more</p> <p>21 and more it evolved where the prescription was a part</p> <p>22 of the ingredient cost and the fee would need to be --</p>	<p>1 A. That's one interpretation.</p> <p>2 Q. And then the next is "the cost to provide</p> <p>3 professional services other than dispensing a</p> <p>4 prescription such as therapeutic interventions" --</p> <p>5 what are therapeutic interventions? Do you know?</p> <p>6 A. If the pharmacist sees a prescription or a</p> <p>7 problem with a therapy, whether there's a drug</p> <p>8 interaction or something, and calls the physician to</p> <p>9 change or address it or informs the physician that</p> <p>10 there might be a problem. That takes time.</p> <p>11 Q. So this is talking about the costs that</p> <p>12 pharmacies incur that's above just your normal</p> <p>13 dispensing a prescription, putting the pills into a</p> <p>14 container, right?</p> <p>15 MS. YAVELBERG: Objection, form.</p> <p>16 A. It's a pharmacist's responsibility and he's</p> <p>17 required to do that. So that's all part of the</p> <p>18 pharmacist's job. He's required to do it. So when he</p> <p>19 sees that problem that's part of the pharmacy cost.</p> <p>20 Q. And states weren't paying --</p> <p>21 A. Dispensing costs.</p> <p>22 Q. -- a separate fee for that, right? They</p>
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<p>1 if you just unilaterally cut the ingredient cost it</p> <p>2 would be hard to put through as well as just a flat</p> <p>3 cut which as we discussed before it would be very hard</p> <p>4 to even put through.</p> <p>5 Q. What the state officials said is you can't</p> <p>6 just look at one side of the equation and adjust it</p> <p>7 without looking it other side, right?</p> <p>8 MS. YAVELBERG: Objection, form.</p> <p>9 A. Well, you have to look at everything. Yes.</p> <p>10 Q. Let me ask you about a couple of the</p> <p>11 specifics here. There's mention of "the effect of</p> <p>12 Medicaid business as a contribution to other store</p> <p>13 sales." What does that mean?</p> <p>14 A. Where are you --</p> <p>15 Q. I'm back on the notes here. The last</p> <p>16 paragraph on the first page. "The effect of Medicaid</p> <p>17 business as a contribution to other store sales."</p> <p>18 What that's saying, is it not, Mr. Tetkoski, is that</p> <p>19 generally speaking pharmacies don't get as much</p> <p>20 crossover business from Medicaid patients as you might</p> <p>21 from a regular customer?</p> <p>22 MS. YAVELBERG: Objection, form.</p>	<p>1 were paying a dispensing fee?</p> <p>2 MS. YAVELBERG: Objection, form.</p> <p>3 A. I'm trying to think if there was some way</p> <p>4 they reimbursed for that separately, if some ever even</p> <p>5 did that. But really, you're a pharmacist, when you</p> <p>6 fill a prescription all that is a package deal.</p> <p>7 That's why a pharmacist has to be on duty.</p> <p>8 MR. TORBORG: Why don't we go ahead and</p> <p>9 take a break here and I'll take a look at what I have</p> <p>10 and I'll give you an estimate of what I've got left.</p> <p>11 THE VIDEOGRAPHER: Off the record at 2:55.</p> <p>12 (Recess.)</p> <p>13 (Exhibit Abbott Maryland 032</p> <p>14 was marked for</p> <p>15 identification.)</p> <p>16 THE VIDEOGRAPHER: On the record at 3:05.</p> <p>17 BY MR. TORBORG:</p> <p>18 Q. Welcome back.</p> <p>19 A. Thank you.</p> <p>20 Q. What I've marked as Abbott Maryland 32</p> <p>21 bears the Bates number MD 0003813 through 3855. It's</p> <p>22 a collection of documents that was produced to us in</p>

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